

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI**

|                                      |   |                                 |
|--------------------------------------|---|---------------------------------|
| <b>PAULA CHERRY, et al.,</b>         | ) |                                 |
|                                      | ) |                                 |
| <b>Plaintiffs,</b>                   | ) |                                 |
|                                      | ) |                                 |
| <b>v.</b>                            | ) | <b>Case No. 03-685-CV-W-FJG</b> |
|                                      | ) |                                 |
| <b>TIME WARNER ENTERTAINMENT</b>     | ) |                                 |
| <b>COMPANY, L.P. ,</b>               | ) |                                 |
|                                      | ) |                                 |
| <b>and</b>                           | ) |                                 |
|                                      | ) |                                 |
| <b>POINT TO POINT EXPRESS, INC.,</b> | ) |                                 |
|                                      | ) |                                 |
| <b>Defendants.</b>                   | ) |                                 |

**ORDER AND JUDGMENT APPROVING WRONGFUL DEATH  
SETTLEMENT AND DISMISSING CASE WITH PREJUDICE**

NOW ON this \_ 10<sup>th</sup> \_ day of \_ May \_, 2005, the Court calls for hearing the Application for Approval of Settlement and Order Apportioning Settlement Proceeds and for Entry of Judgment, and having considered the evidence presented and being fully advised of the premises, finds that the proposed settlement in the amount stated in the Settlement Agreement and General Release between defendants Time Warner Entertainment Company, L.P. ("Time Warner"), Point to Point Express, Inc. ("Point to Point"), Marvin Minnick, Jr., and the plaintiff Paula Cherry, the wife of the decedent, Allen Cherry, ("plaintiff"), and Justin Cherry, Ally Elizabeth Cherry, and Emma Grace Cherry, the children of Allen Cherry, and Glen Cherry and Nellie Cherry, the parents of Allen Cherry, is fair and reasonable and should be approved. The Court further finds that all parties and persons interested in the proceedings, pursuant to Mo. Rev. Stat. § 537.080, have been duly notified pursuant to Mo. Rev. Stat. § 537.095, and are present either in person or by representative in this Court on this date. Additionally, the Court

finds that a Settlement Agreement and General Release between the plaintiff and Time Warner, Point to Point and Marvin Minnick, Jr. has been entered into in good faith to settle all claims between the parties as set forth in the Settlement Agreement and General Release pursuant to Mo. Rev. Stat. § 537.060, a copy of which is attached hereto as exhibit 1.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

1. Paula Cherry who is over the age of twenty-one years, is the wife of Allen Cherry, deceased, and Glen Cherry and Nellie Cherry are the parents of Allen Cherry, and Justin Cherry, Ally Elizabeth Cherry (a minor), and Emma Grace Cherry (a minor), are the children of Allen Cherry, deceased, are entitled to bring this wrongful death action relating to the death of Allen Cherry, and pursuant to Mo. Rev. Stat. § 537.080 they are entitled to proceeds of this settlement. Paula Cherry, Justin Cherry, Ally Elizabeth Cherry, Emma Grace Cherry, and Glen Cherry and Nellie Cherry constitute the entire class of persons authorized to sue under Mo. Rev. Stat. § 537.080.

2. The proposed Settlement Agreement and General Release adopted and incorporated by reference herein, has been submitted to the Court and the Court approves the Settlement Agreement and General Release.

3. The total settlement in the amount agreed to by the parties in the Settlement Agreement and General Release is approved and Judgment is hereby entered in the amount identified in the Settlement Agreement and General Release which is filed herewith under seal to protect the interests of all the parties to this Settlement Agreement and General Release.

4. Attorneys' fees and expenses and costs of litigation as authorized by the Contingent Fee Contract are approved and are ordered paid from the settlement proceeds.

5. The amount of the settlement to be used to satisfy the Worker's Compensation lien is approved and is ordered paid from the settlement proceeds.

6. That plaintiffs shall receive the distribution of the settlement proceeds remaining after attorney fees and expenses are deducted as provided in the Settlement Agreement and General Release, a copy of which is attached hereto as exhibit 1.

7. All issues raised by the proposed Settlement Agreement and General Release have been submitted to the Court and the parties to the agreement have knowingly waived their rights to any additional jury trial and to any appeal therefrom.

8. The parties are authorized and directed to execute the Settlement Agreement and General Release in favor of Time Warner, Point to Point and Marvin Minnick, Jr. as specified in the Settlement Agreement and General Release.

9. The Plaintiff is Ordered to give receipt for the payments described herein and provide an accounting for the proceeds.

10. Paula Cherry is the mother of Ally Elizabeth Cherry (a minor) and Emma Grace Cherry (a minor) and, in the event that Ally Elizabeth Cherry or Emma Grace Cherry should predecease Paula Cherry, Paula Cherry shall be the designated beneficiary to the settlement proceeds allocated to Emma Grace Cherry and Ally Elizabeth Cherry in the Settlement Agreement and General Release.

11. Judgment is entered in accordance with this Order.
12. The case is dismissed with prejudice, each party to bear its own costs.

/s/ FERNANDO J. GAITAN, JR.

Fernando J. Gaitan, Jr.  
U. S. District Court Judge

Date:\_\_\_\_May 10, 2005\_\_\_\_